University of Michigan Law School
University of Michigan Law School Scholarship Repository

Articles | Faculty Scholarship

2014

Using Preventive Legal Advocacy to Keep Children from Entering Foster Care

Vivek Sankaran
University of Michigan Law School, vss@umich.edu

Follow this and additional works at: http://repository.law.umich.edu/articles

Part of the Family Law Commons, Juveniles Commons, Social Welfare Law Commons, and the State and Local Government Law Commons

Recommended Citation
Sankaran, Vivek. "Using Preventive Legal Advocacy to Keep Children from Entering Foster Care." Wm. Mitchell L. Rev. 40, no. 3 (2014): 1036-47.

This Article is brought to you for free and open access by the Faculty Scholarship at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Articles by an authorized administrator of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

USING PREVENTIVE LEGAL ADVOCACY TO KEEP CHILDREN FROM ENTERING FOSTER CARE

Vivek Sankaran†

INTRODUCTION 1036
I. CHILDREN MAY ENTER FOSTER CARE BECAUSE OF UNRESOLVED LEGAL ISSUES 1039
II. AN EMERGING MODEL TO ADDRESS THE UNRESOLVED LEGAL NEEDS OF CHILDREN AT RISK OF ENTERING FOSTER CARE 1041
III. INITIAL DATA DEMONSTRATES THAT THIS MODEL CAN KEEP CHILDREN SAFE WITH THEIR FAMILIES WHILE SAVING PUBLIC DOLLARS 1042
IV. DIVERSE FEDERAL FUNDING SOURCES EXIST TO SUPPORT THIS MODEL 1044
A. *Title IV-B* 1044
B. *TANF* 1045
C. *Medicaid* 1045
D. *Social Services Block Grant* 1045
E. *Title IV-E Waiver* 1046
CONCLUSION 1047

INTRODUCTION

Across the country, parents in child welfare cases receive inadequate legal representation.[1] Fortunately, increased attention

† Vivek Sankaran is a clinical professor of law at the University of Michigan Law School. He directs the Child Advocacy Law Clinic and the Child Welfare Appellate Clinic and founded the Detroit Center for Family Advocacy.

1. *See, e.g.*, WILLIAM BOWEN ET AL., CONN. VOICES FOR CHILDREN, GIVING FAMILIES A CHANCE: NECESSARY REFORMS FOR THE ADEQUATE REPRESENTATION OF CONNECTICUT'S CHILDREN AND FAMILIES IN CHILD ABUSE AND NEGLECT CASES, at ii (2007), *available at* http://www.ctvoices.org/sites/default/files/welf07reformsforrep.pdf ("The current model of representation in Connecticut . . . does not provide constitutionally-adequate legal representation

is being given to this issue by state and national advocacy organizations, including the American Bar Association and the National Association of Counsel for Children, among others.[2] Discussions created by these groups and policy makers have largely focused on strengthening a parent's right to counsel *after* children have been removed from their parents by the state.[3]

But a lawyer may be able to prevent a child from entering foster care in the first instance. Children may unnecessarily enter foster care because their parents are unable to resolve legal issues that affect their safety and well-being in their home. Take Travis P., a seven-year-old child whose six siblings and mother became homeless after their landlord illegally evicted them and kept both their security deposit and first month's rent. As a result, Travis and his family bounced between the homes of relatives. When the frequent moves caused Travis to miss school, he came to the attention of Child Protective Services (CPS), which became concerned that Travis's educational needs were being neglected. What Travis and his siblings needed more than anything else was a

for children and parents in abuse and neglect proceedings."); MUSKIE SCH. OF PUB. SERV. & AM. BAR ASS'N, MICHIGAN CIP REASSESSMENT: HOW MICHIGAN COURTS HANDLE CHILD PROTECTION CASES, at x (2005), *available at* http://muskie.usm.maine.edu/Publications/cf/MI_CIPReassessment_Summary.pdf ("Based on interviews, the statewide jurist survey, and court observations, it is clear that many attorneys fail to independently investigate the facts of a case and to meet with clients to prepare for hearings. Many carry excessive caseloads and receive low compensation. Parents and youth reported speaking with their attorneys only immediately prior to hearings, or in some cases for the youth, not speaking with them at all."); REPORT OF CHILDREN'S JUSTICE INITIATIVE PARENT LEGAL REPRESENTATION WORKGROUP TO MINNESOTA JUDICIAL COUNSEL 2 (2008), *available at* http://www.leg.state.mn.us/docs/2009/other/090151.pdf (observing that there is no statewide system to ensure qualified legal representation for parents); THE SPANGENBERG GRP., WESTERN MASSACHUSETTS CHILD WELFARE CASES: THE COURT-APPOINTED COUNSEL SYSTEM IN CRISIS 2 (2003), *available at* http://www.publiccounsel.net/practice_areas/cafl_pages/pdf/cafl_news/executive_summary.pdf ("There is a critical shortage of attorneys available to handle the ever-increasing volume of child welfare cases in the juvenile courts of Massachusetts.").

2. *See* Am. Bar Ass'n Ctr. on Children & the Law, *Parent Representation*, A.B.A., http://www.americanbar.org/groups/child_law/what_we_do/projects/parentrepresentation.html (last visited Mar. 7, 2014).

3. *See* Am. Bar Ass'n Ctr. on Children & the Law, *National Project to Improve Representation for Parents Involved in the Child Welfare System*, A.B.A., http://www.americanbar.org/groups/child_law/what_we_do/projects/parentrepresentation.html (last visited Mar. 7, 2014) (follow "Project Description" hyperlink).

stable home. And to get that, their mother needed a lawyer to help her recover the security deposit from her former landlord and a social worker to help them find housing. Without this help, Travis and his siblings could have been removed from their mother and placed in foster care.

Yet these kinds of legal needs for poor families are rarely met. On average, poor families experience at least one civil legal need per year, but only a small portion of those needs are satisfied.[4] For about every six thousand people in poverty, there exists only one legal aid lawyer.[5] So legal aid programs are forced to reject close to a million cases each year.[6] This lack of legal services threatens the well-being of children like Travis, who may enter foster care if legal issues are left unresolved.

This article describes the beginning of a movement across the country to address this problem. Multidisciplinary legal offices are emerging that provide preventive legal and social work advocacy to families at risk of losing children to foster care. These programs are new. The oldest office was formed in 2009[7] and only initial evaluations have occurred.[8] But preliminary data suggests that they can have an enormous impact on preventing children from entering foster care.[9] Not only do they keep children with their families, they also have the potential to save child welfare systems significant amounts of money by reducing the need to rely on foster care, which can be very costly.[10] This article details how a family's unmet legal needs can place a child at risk of entering foster care, discusses the developing model to address this need, and explores federal funding streams that can support the model.

4. LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 15–16 (2009), *available at* http://www.mlac.org/pdf/Documenting-the-Justice-Gap.pdf.

5. *Id.* at 1.

6. *Id.* at 9.

7. *See infra* Part II.

8. *See infra* Part II.

9. *See infra* Part III.

10. *See infra* Part III.

I. CHILDREN MAY ENTER FOSTER CARE BECAUSE OF UNRESOLVED LEGAL ISSUES

A parent's inability to resolve legal issues may jeopardize a child's safety and well-being in the home and may increase the likelihood of a child entering foster care. For example, a domestic violence victim may be unable to secure a personal protection order and may be forced to allow her child to have contact with his abusive father. A mother seeking inpatient drug treatment may be unable to transfer her parental authority to a relative and may be forced to leave her child with a relative who has no legal ability to address the child's needs. A father may be wrongfully denied food stamps and may be unable to provide his children with a proper meal. Each of these scenarios highlights the myriad ways in which unresolved legal issues can impact a child's safety and well-being. Each, too, highlights the possibility of CPS getting involved because a child's basic needs are not being met.

That unresolved legal issues can impact outcomes for children has been recognized by other professions, most notably the medical field. In 1993, Dr. Barry Zuckerman, chief of pediatrics at Boston Medical Center, created the first medical-legal partnership (MLP) "to improve the health and well-being of vulnerable individuals, children and families by integrating legal assistance into the medical setting."[11] Lawyers meet with families to identify and address those issues affecting their health and advocate to resolve them.

Dr. Zuckerman recognized that legal systems held solutions for many determinants of health, such as malnourished children who need food stamps, asthmatic kids who need landlords to provide safe housing, and vision-impaired children who need Medicaid to cover the costs of glasses.[12] Dr. Zuckerman, who grew tired of

11. Rebecca L. Huston et al., *Medical-Legal Partnerships*, 13 AM. MED. ASS'N J. ETHICS (VIRTUAL MENTOR), Aug. 2011, at 555, 557, *available at* http://virtualmentor.ama-assn.org/2011/08/pdf/hlaw1-1108.pdf; *see also* Anna Gorman, *Law Is Good Medicine: Medical-Legal Partnerships Can Improve the Health of People in Low-Income Neighborhoods*, L.A. TIMES, Mar. 13, 2010, at 1, *available at* 2010 WLNR 5282977 (discussing the benefits of medical-legal partnerships); *History*, NAT'L CENTER FOR MED.-LEGAL PARTNERSHIP, http://www.medical-legalpartnership.org/movement/history (last visited Mar. 7, 2014) (describing the origins and history of medical-legal partnerships).

12. *History*, *supra* note 11; *see also* Barry Zuckerman et al., *Why Pediatricians Need Lawyers to Keep Children Healthy*, 114 PEDIATRICS 224, 224–28 (2004)

having his ability to help children limited by the medicine he could prescribe, remarked, "The model makes so much sense . . . . We can all do what we want medically but because of these problems, if changes aren't made, nobody is going to get better . . . . The unfortunate reality is that we need lawyers."[13]

Since Dr. Zuckerman launched the MLP model, it has grown to meet the needs of thousands of children.[14] The model has been integrated into the practice of over 275 hospitals and health care centers.[15] In 2010, more than 13,000 individuals received legal assistance through MLPs and more than 10,000 health care professionals received training on the model, which has been endorsed by the American Medical Association and the American Bar Association.[16] Now, support for the model is coordinated by the National Center for Medical-Legal Partnership, which is housed at the George Washington University School of Public Health and Human Services.[17]

Yet for children like Travis P., at risk of entering foster care, legal needs are routinely ignored. Although, in most parts of the country, juvenile courts appoint lawyers to represent parents and children in child welfare proceedings, these lawyers are appointed only *after* a child has already been removed from his parents' home and placed in foster care.[18] Additionally, these lawyers are poorly compensated, lack adequate training, and only handle legal issues directly related to the ongoing child welfare case.[19] Thus, collateral issues affecting the child's safety—such as housing, domestic violence, and custody matters that, if resolved, could prevent the child from entering foster care—are rarely addressed.

(discussing doctors' lack of understanding of Medicaid eligibility).

13. Gorman, *supra* note 11.

14. *See* Huston et al., *supra* note 11, at 556; *History*, *supra* note 11.

15. *History*, *supra* note 11.

16. Huston et al., *supra* note 11, at 556; *History*, *supra* note 11.

17. *History*, *supra* note 11.

18. Vivek S. Sankaran, *Protecting a Parent's Right to Counsel in Child Welfare Cases*, 28 CHILD L. PRAC. 97, 103–04 (2009).

19. *Id.* at 101.

II. AN EMERGING MODEL TO ADDRESS THE UNRESOLVED LEGAL NEEDS OF CHILDREN AT RISK OF ENTERING FOSTER CARE

Fortunately, a new model has emerged to provide targeted legal and social work advocacy to prevent the unnecessary entry of children into the foster care system. In 2009, the University of Michigan Law School's Child Advocacy Law Clinic created the Detroit Center for Family Advocacy (CFA), which provides legal and social work advocacy to families to prevent children from entering foster care.[20] Since that time, similar programs have emerged in Vermont and California; others are planned in Iowa[21] and the District of Columbia,[22] among other jurisdictions.[23]

The core elements of the model are similar across programs. Child welfare agencies, courts, community-based organizations, and others refer families at risk of losing children to foster care because of unresolved legal issues. Once a case is accepted, the programs provide families with the assistance of an attorney, a social worker, and a parent advocate to help resolve legal issues—of the type detailed at the outset of the article—which affect the safety of the child in the home. Lawyers may file for a restraining order, draft a power of attorney, file for a guardianship, apply for public benefits, or help with special-education entitlements.

The social worker on the team assesses the family's strengths and weaknesses and provides case management. She works with existing community partners to help the parent or caregiver access a network of services, such as transitional housing, counseling, and substance abuse treatment, and works cooperatively with the child welfare agency caseworker to create a mutually agreeable safety plan for the parent to meet his or her child's needs.

And the parent advocate—a parent who, herself, has experienced the child welfare system—provides clients with a

20. *See Detroit Center for Family Advocacy*, U. MICH. L. SCH., http://www.law.umich.edu/centersandprograms/pcl/cfa/Pages/default.aspx (last visited Mar. 7, 2014) (providing more information about the Detroit Center for Family Advocacy).

21. Email from Gail Barber, Director, Iowa's Children's Justice, to author (Jan. 25, 2013, 17:26 EST) (on file with author).

22. Email from Brenda Donald, Director, Child & Family Servs. Agency, Wash., D.C., to author (Jan. 24, 2013, 09:37 EST) (on file with author).

23. *See LAM Launches Parent Partner Support Program*, MARIN JUSTICE (Legal Aid of Marin), Fall 2012, at 1; VT. PARENT REPRESENTATION CENTER, INC., http://vtprc.org (last visited Mar. 7, 2014).

unique perspective of how to navigate the system and helps parents stay focused and motivated in the face of adversity. Through this multidisciplinary team approach, these programs work collaboratively with child welfare agencies and others in the community to resolve legal issues and keep children in their homes.

In addition to resolving legal issues affecting the families, the multidisciplinary advocacy teams serve two other important purposes. First, they educate child welfare caseworkers about the ways in which the law can be used as a preventive tool to resolve problems that affect a child's safety. The knowledge gained by caseworkers increases the likelihood they may pursue creative strategies to keep children with their families. Second, by forming trusting relationships with their clients, the multidisciplinary advocacy teams are well suited to help parents learn how to make the changes necessary for their children to remain in their home. Many of these parents have an adversarial relationship with CPS workers due to the investigative nature of the child welfare process. Far too often, a parent's distrust towards the child welfare system makes them unwilling to engage with the system to work towards keeping children in their care. The teams, by having complete loyalty to the client, may be better suited to persuade parents to access needed services like public benefits, counseling, or substance abuse treatment that will help prevent children from being removed from their homes.

III. INITIAL DATA DEMONSTRATES THAT THIS MODEL CAN KEEP CHILDREN SAFE WITH THEIR FAMILIES WHILE SAVING PUBLIC DOLLARS

Although only initial evaluations of this model have been conducted, data from two sites—the CFA and the Vermont Parent Representation Center (VPRC)—show how effective it can be to keep children safe with their families while saving public dollars. During the three-year pilot period, CFA staff served fifty-five families who were caring for 110 children.[24] Due to funding restrictions, the CFA only served children who had already been found by the child welfare agency to have been abused or neglected. Sixty-nine percent of the children served by the CFA

24. DETROIT CTR. FOR FAMILY ADVOCACY, U. MICH. L. SCH., PROMOTING SAFE AND STABLE FAMILIES 12 (n.d.), *available at* http://issuu.com/michiganlawschool/docs/cfa_report.

lived with their birth parents; thirty percent resided with relatives through an arrangement made by their parents.[25]

The CFA staff achieved its legal objectives in 98.2% of prevention cases, resolving collateral legal issues in a wide range of matters including housing, custody, guardianships, public benefits, and domestic violence.[26] Most importantly, none of the children served by the CFA entered foster care.[27]

The VPRC achieved similar success. Over a two-year period, the VPRC served eighteen families who were caring for forty-three children.[28] Each case involved a child who faced a significant risk of being removed from his or her home.[29] In seventy-eight percent of cases, the VPRC prevented children from entering foster care.[30] In those cases in which children entered foster care, fifty percent went home to their families expeditiously.[31]

The ability of this model to prevent children from entering foster care presents a significant opportunity for child welfare systems to save scarce public dollars while achieving good outcomes for children. For example, over a three-year period, the CFA spent $833,000 and kept 110 children, all of whom had been found by the state to be victims of child abuse or neglect, from entering foster care.[32] Typically, when children enter foster care, they remain there for an average of 21.1 months.[33] The average annual cost for a child to remain in foster care is over $45,000.[34] Thus, if the model prevented a quarter of the children served by the CFA from entering foster care, the cost avoided by the child welfare agency would be over $1.3 million, providing a net savings to the system of over $500,000 once the costs for funding the model are included.[35] Similarly, the VPRC estimated saving public systems a

25. *Id.*
26. *See id.*
27. *Id.*
28. *VPRC's Performance Measures*, VT. PARENT REPRESENTATION CENTER, INC., http://vtprc.org/performance (last visited Jan. 16, 2014).
29. *Why VPRC Is Important to Vermont Families*, VT. PARENT REPRESENTATION CENTER, INC., http://vtprc.org/what-we-do (last visited Jan. 16, 2014).
30. *VPRC's Performance Measures*, *supra* note 28.
31. *Id.*
32. DETROIT CTR. FOR FAMILY ADVOCACY, *supra* note 24, at 15.
33. *Id.*
34. *Id.*
35. *Id.*

minimum of $250,000 over a two-year period.[36] Although the potential cost savings of this model needs to be more fully developed, this initial data suggests an enormous potential for the model to save child welfare systems thousands of dollars.

IV. DIVERSE FEDERAL FUNDING SOURCES EXIST TO SUPPORT THIS MODEL

Current multidisciplinary advocacy teams rely upon diverse sources of funding to support their work, most of which are short term in duration. For example, the CFA is supported by private foundation grants, individual donations, and matching funds from a statewide program aimed at keeping children in their communities.[37] The VPRC has relied on support from state grants, foundations, and individuals.[38] And the California Parent Partner Support Program was launched through a short-term grant from California's Administrative Office of the Courts through its court improvement project.

To replicate and sustain this model in other places, permanent funding streams need to be identified. Funds from a number of federal programs could support the model. However, these funds flow directly from the federal government to state agencies. Thus, advocates seeking to apply funds from these sources must persuade child welfare agencies in their state that the purpose of the multidisciplinary advocacy teams falls within the scope of these federal programs.

A. *Title IV-B*

Two programs created by Title IV-B of the Social Security Act—the Stephanie Tubbs Jones Child Welfare Services Program[39] and Promoting Safe and Stable Families[40]—provide states with federal dollars to fund services and activities to preserve and reunify families. Both programs provide states with considerable flexibility in determining how to use these funds.[41] In fiscal

36. *VPRC's Performance Measures, supra* note 28.

37. DETROIT CTR. FOR FAMILY ADVOCACY, *supra* note 24, at 18.

38. *Donate to VPRC*, VT. PARENT REPRESENTATION CENTER, INC., http://vtprc.org/donate (last visited Mar. 7, 2014).

39. 42 U.S.C. §§ 621–628b (2006).

40. *Id.* §§ 629–629i.

41. KERRY DEVOOGHT & HOPE COOPER, STATE POLICY ADVOCACY & REFORM

year 2012, Title IV-B funding represented nine percent of federal funds used by states for child welfare services.[42]

B. *TANF*

The Temporary Assistance for Needy Families (TANF) program, a federal block grant that, among other purposes, supports programs that prevent out-of-home placements for needy children, is another flexible federal funding stream that can be used by state child welfare agencies.[43] The states can use TANF funds to support any service designed to further this goal.[44] In fiscal year 2010, TANF accounted for twenty-two percent of all federal funds spent on child welfare.[45]

C. *Medicaid*

Most children at risk of entering foster care are eligible for Medicaid, an open-ended entitlement providing access to medical care for needy children.[46] Through the program, child welfare agencies can be reimbursed for case management activities designed to help beneficiaries of the program gain access to needed medical, social, educational, or other services.[47] In fiscal year 2010, Medicaid accounted for seven percent of all federal funds spent on child welfare.[48]

D. *Social Services Block Grant*

The Social Services Block Grant, a capped entitlement program, provides states with funding to prevent or remedy child abuse and neglect, to reduce the number of children entering

---

CTR., CHILD WELFARE FINANCING IN THE UNITED STATES 4 (2012), *available at* http://childwelfaresparc.files.wordpress.com/2013/02/child-welfare-financing-in-the-united-states-final.pdf.

42. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-13-170, CHILD WELFARE: STATES USE FLEXIBLE FEDERAL FUNDS, BUT STRUGGLE TO MEET SERVICE NEEDS 8 (2013), *available at* http://www.gao.gov/assets/660/651667.pdf.

43. DEVOOGHT & COOPER, *supra* note 41, at 11.

44. *Id.*

45. *Id.*

46. *See id.* at 13–14.

47. *See id.* at 13.

48. *Id.*

institutional care, and to help families become self-sufficient.[49] In fiscal year 2010, the Block Grant accounted for twelve percent of all federal funds spent on child welfare.[50]

E. Title IV-E Waiver

Title IV-E of the Social Security Act, "an open-ended entitlement to support the costs of caring for eligible children in foster care," represents nearly ninety percent of federal funding dedicated to child welfare.[51] Funds from the program are primarily available for specific foster care and adoption expenses, but cannot be used to support services to families.[52]

In 2011, Congress authorized the Department of Health and Human Services to waive funding restrictions tied to the program so that states with approved demonstration projects can spend those funds more flexibly.[53] To be granted a waiver, states must demonstrate that their projects are cost neutral to the federal government, among other requirements.[54] As of October 2012, fourteen states had waiver demonstration projects, many of which focused on innovative strategies to prevent children from entering foster care.[55] The Department of Health and Human Services can approve up to thirty projects through 2014.[56]

Funds from any of these programs could be used to support the emerging multidisciplinary advocacy model. But advocates must work collaboratively with child welfare agencies to convince them to do so.

---

49. DEVOOGHT & COOPER, *supra* note 41, at 12; KAREN E. LYNCH, CONG. RESEARCH SERV., 94-953, SOCIAL SERVICES BLOCK GRANT 2 (2012).

50. DEVOOGHT & COOPER, *supra* note 41, at 12.

51. U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 42, at 9–10.

52. *Id.* at 9.

53. *Id.* at 10–11.

54. *Id.* at 11. The Department of Health and Human Services was able to waive the fees prior to 2011. That authority "lapsed in 2006 but was renewed by Congress in 2011." *Id.*

55. *Id.* at 20–21.

56. Child and Family Services Improvement and Innovation Act, Pub. L. No. 112-34, § 201(1), 125 Stat. 369, 378 (2011).

CONCLUSION

Although the multidisciplinary advocacy model is new, it has the potential of preventing significant numbers of children from entering foster care while saving scarce public dollars. Undoubtedly, more research must be done to evaluate the effectiveness of the model. But the preliminary data demonstrates that providing families with a multidisciplinary team can help keep children safe with their families by resolving those legal issues that are destabilizing the family unit.